



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/164772

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 17, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on June 09, 2015, at Baraboo, Wisconsin.

The issue for determination is whether the agency established liability for a \$785.58 overpayment of CC benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Megan Thurston

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner has placement of the child in question by agreement on Monday, Tuesday and Wednesdays.

3. Between 7/7/13 and 12/31/14 petitioner received CC benefits for the child for the days of Thursday and Friday.
4. By notice dated 5/6/15 the agency sought recoupment of \$785.58 in overpaid CC for the times when the child was placed with the other parent.

### DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*; *Child Day Care Manual*, §2.5.0.

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g).

It makes no difference as to whether an overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must be recovered even if it was caused by agency error.

The program manual provides:

#### **1.9.0 Shared Placement Cases**

Each parent in a shared placement case may apply for Wisconsin Shares child care assistance **for the time that the child in common is residing with him or her while they are participating in an approved activity.** Each parent will have their own case number but the child will be assigned a unique PIN number that will be used in both cases. The child Care Payment system is designed to allow a child to be included in two separate Assistance Groups for this situation (See the Authorization Section for Shared Placement Authorizations).

*Wisconsin Shares Child Care Assistance Manual* at § 1.9.0 (emphasis added).

The Department presented a well-documented case with sufficient evidence to support the claimed overpayments based on the premise that petitioner received CC benefits during times that the child was not residing with her but was with the other parent. The October 2014 custody agreement indicates shared placement of 50/50 effective July 2013. During the periods of the overpayments the agency had been relying on petitioner's repeated report that she had 100% placement on her application and six-month report forms.

At hearing, petitioner offered no cogent or logical objection to the claims. She stated that she was not aware that the other parent needed to apply for CC for the two days of his placement. Petitioner stated that she still attended the daycare and still needed the assistance. The CC scheme clearly allows for the assistance to be provided, but it must be sought by the parent with placement at the times the assistance is needed. That is not what happened here. The reason for this requirement is that the parent with placement of the child the other times may not be financially eligible for CC or may not be engaged in approved activities justifying the CC benefits at those times.

### **CONCLUSIONS OF LAW**

The Department did not err in finding petitioner liable for a \$785.58 child care overpayment.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

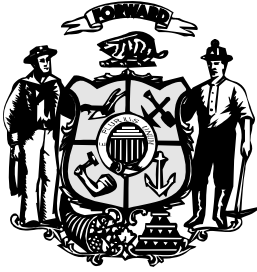
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 31st day of July, 2015

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 31, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud